

FRANKLIN ASSET MANAGEMENT COMPANY

1

FAIR HOUSING Compliance in 2018

KATHI WILLIAMS

LAW FIRM OF WILLIAMS &
EDELSTEIN, P.C.

KATHI@FAIRHOUSE.NET

770-840-8483

Agenda

- ❖ Fair Housing – 50 Years Later
- ❖ Testing – Think Twice before You Speak Once
- ❖ Criminal Screening
- ❖ Familial Status
- ❖ Fair Housing for Maintenance
- ❖ Reasonable Accommodations – The Process
- ❖ Assistance Animals
- ❖ Parking
- ❖ Smoking
- ❖ Other Examples
- ❖ Reasonable Modifications

Fair Housing Today – It's Complicated

- ❖ Many more topics beyond the Fair Housing Act = Occupancy, VAWA, Language, Harassment, Expansion of Definition of Sex Discrimination, Protection of Persons based upon Sexual Orientation and Gender Identity, Disparate Impact, Criminal History Screening
- ❖ Ever increasing numbers of cases based upon disability and reasonable accommodation

Testing – Think Twice Before You Speak Once

4

- ❖ How does it work?
- ❖ Do you know if you've been tested?
- ❖ What are testers looking for?
- ❖ Who lives here?
- ❖ Availability
- ❖ Difference in process - length of discussion, offer of property tour, offer application, difference of rental rates or application fees
- ❖ Accessibility
- ❖ Animal questions
- ❖ Criminal history screening questions



Criminal History Screening

- ❖ HUD Notice 2015-10 prohibits screening for arrests
- ❖ April 2016 HUD General Counsel's Guidance
- ❖ **Disparate Impact** issues with criminal history screening
- ❖ Importance of developing and applying a nuanced criminal history screening policy that can be explained and is not based on emotional stereotypes
- ❖ Consider seriousness of crime and length of look back period
- ❖ Apply good faith appeals process to examine mitigating circumstances
- ❖ If HUD funded, must continue to apply HUD screening requirements
- ❖ Importance of having a clearly stated credit and criminal policy that screening company applies accurately

Familial Status

6

- ❖ Adults living with children under age of 18
- ❖ Pregnant women
- ❖ History of familial status cases
- ❖ Recent Cases
- ❖ Best Practices
 - ❖ Property rules
 - ❖ Curfews
 - ❖ Supervision Rules
 - ❖ Occupancy standards



Fair Housing Issues for Maintenance Employees

- ❖ Maintenance employees have constant contact with residents
- ❖ That contact gives them lots of opportunities to make statements or take actions that a resident may complain about later
- ❖ Many fair housing complaints have been caused by the statements or actions of maintenance employees
- ❖ Maintenance employees are the agents of FAM
- ❖ Importance of reporting incidents

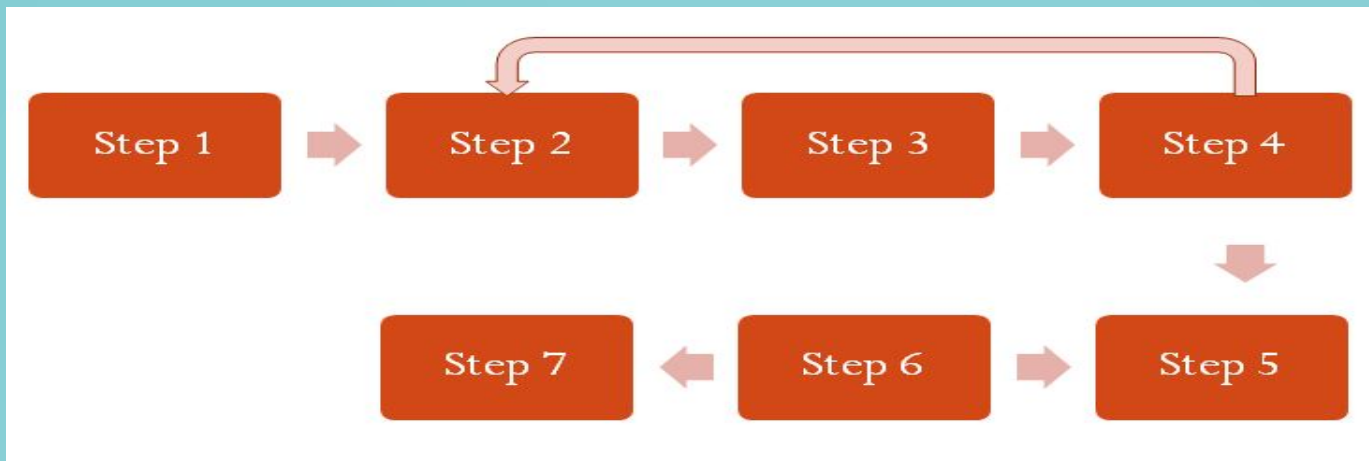
Avoid the Appearance of Discrimination

- ❖ Favors for residents you like
- ❖ Avoiding the work for residents you don't like
- ❖ Accepting money for off duty jobs
- ❖ Spending lots of time in one resident's apartment



Reasonable Accommodations Steps

1. Resident makes request
2. Staff "hears" request
3. Resident fills out form or if refuses, manager fills it out
4. Verification only if necessary



Verification of Need

10

- ❖ Verify only 1) if the disability status and/or 2) connection between the disability and the requested accommodation is not readily apparent (visually obvious)
- ❖ If a verification is needed, resident identifies verifier and signs the authorization on a Verification Form
- ❖ Staff sends out the verification form
- ❖ If not returned, staff follows up with the verifier at least once
- ❖ If verifier does not respond, notify resident
- ❖ Cannot require use of forms, but can require to receive reliable verification

Reasonable Accommodation Steps

11

If verifier does not respond notify resident that verification is needed to approve RA

6. If management is unable or unwilling to provide the resident with the accommodation requested, or if management is unclear how the requested accommodation is connected to the resident's disability request **interactive meeting**.
Document meeting content

7. Management notifies the resident of the determination

8. Take necessary steps to achieve the accommodation as agreed

- ▶ Document file when accommodation achieved

9. In some instances you may reverify the need in the future

10. Keep reasonable accommodations log

11. Review and revise forms regularly

Assist Animals Include Service and Emotional Support Animals

12



Assistance Animal Issues

13

- ❖ The basics
- ❖ Confusion between ADA and FHA
- ❖ Breeds and Types of Animals
- ❖ More than One Animal
- ❖ Who can Verify Need
- ❖ Internet or “Purchased” Verifications
- ❖ Guest Assistance Animals
- ❖ Other Questions??

Reasonable Accommodations Parking

- ❖ When to assign a parking space
- ❖ Follow the process
- ❖ What kind of space?
- ❖ Placard vs. Verification
- ❖ When you don't have any other spaces in your lot
- ❖ Parking policy

Neighbors Complain about Second Hand Smoke

15



Fair Housing and Smoking Issues

16

- ❖ Differentiate between complaint by resident who just does not like smoke vs. a resident who is disabled and is asking for a reasonable accommodation
- ❖ Do everything you can: replace filter, add door guards, fill in electrical and light boxes in wall, have both residents get air filter, transfer, permit resident to terminate lease
- ❖ Document efforts
- ❖ It is not a reasonable accommodation to smoke - **anything**

Other Examples

17

Transfers

Larger unit

- ▶ Change in flooring
- ▶ Live in aide

Reasonable Modifications

18



Reasonable Modifications

19

- ❖ Separate and unrelated from accessibility standards
- ❖ Structural change to unit or common areas
- ❖ Usually does not require verification
- ❖ Be sure to have a conversation so management can describe options for modification as residents are limited in knowing possible modifications
- ❖ If private market or Section 8 Voucher (resident based) tenant pays = FHA

Modifications cont.

- ❖ If federal subsidy HUD or RD then management pays = Section 504
 - ❖ Unless cost would result in an administrative and financial burden
 - ❖ Management is responsibility to prove that cost would be a burden
 - ❖ Management must provide cost up to point it becomes a financial burden

What Else?

21



FRANKLIN ASSET MANAGEMENT COMPANY

22

FAIR HOUSING Compliance in 2018

KATHI WILLIAMS

LAW FIRM OF WILLIAMS & EDELSTEIN, P.C.

KATHI@FAIRHOUSE.NET

770-840-8483

